

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:)	2 CA-CV 2011-0130
)	DEPARTMENT A
LINDSEY LANSKY,)	
)	<u>MEMORANDUM DECISION</u>
Petitioner/Appellant)	Not for Publication
)	Rule 28, Rules of Civil
and)	Appellate Procedure
)	
GREGORY LANSKY,)	
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20103566

Honorable Carmine Cornelio, Judge

DISMISSED

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H O W A R D, Chief Judge.

¶1 Appellant Lindsey Lansky appeals from the trial court's July 1, 2011 minute entry ordering Lindsey and appellee Gregory Lansky to share joint custody of their two minor children. Because we do not have jurisdiction, we dismiss this appeal.

Factual and Procedural Background

¶2 Lindsey filed a petition for dissolution of marriage with minor children in September 2010. After a hearing, the trial court ordered Gregory be the primary custodial parent until the time of his then-expected deployment at which point Lindsey would be the primary custodial parent. Gregory filed a motion for reconsideration, and the court ordered that the minor children reside with Gregory upon his return from deployment so long as he resided in Arizona.

¶3 A trial was held on the issues of custody, parenting time, and child support. In its signed minute entry, filed July 1, 2011, the trial court ordered that the children not be relocated and that the parties share joint legal custody and parenting time. The court also ordered counsel to set a date for a status conference "regarding the final order and decree of dissolution of marriage and a final decision as to [Lindsey's] relocation to Tucson, Arizona." It set forth that it "sign[ed] the minute entry in lieu of a more formal order." Lindsey filed a notice of appeal on July 13, 2011. Following the status conference on July 21, 2011, the court issued a decree of dissolution of marriage on August 16, 2011. Lindsey did not file another notice of appeal.

Discussion

¶4 Lindsey claims this court has jurisdiction under A.R.S. § 12-2101, characterizing the trial court's July 1 minute entry as a judgment. We have an

independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). And “[w]herever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will apply.” Ariz. R. Fam. Law P. 1 cmt.

¶5 Section 12-2101(A)(1) vests jurisdiction in this court “[f]rom a final judgment.” Generally we do not have jurisdiction over an appeal unless a judgment has disposed of all parties and claims. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). If an order does not adjudicate all claims between all parties it is not appealable unless it satisfies the requirements of Rule 78(B), Ariz. R. Fam. Law P. *See Musa*, 130 Ariz. at 313, 636 P.2d at 91 (interpreting Rule 54(b), Ariz. R. Civ. P.). *Compare* Ariz. R. Fam. Law P. 78(B), *with* Ariz. R. Civ. P. 54(b). Rule 78(B) only applies if the trial court enters a final judgment “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Unless only ministerial acts remain to be performed, “a notice of appeal filed in the absence of a final judgment . . . is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), *quoting Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39, 132 P.3d 1187, 1195 (2006).

¶6 Here, in the July 1 minute entry, the trial court set a status conference to settle the amount of child support and the final decree, and both of those matters depended on whether Lindsey had decided to move back to Tucson. Its minute entry states that the status conference would be “regarding the final order and decree of dissolution of marriage.” And the court did not enter a determination pursuant to Rule 78(B) or include other jurisdictional findings required for a final decree.¹ Thus, the July 1 minute entry was not a final appealable judgment. And, because substantive issues remained to be resolved, the notice of appeal was a nullity. *See Craig*, 212 Ariz. 407, ¶ 13, 132 P.3d at 1195. We therefore do not have jurisdiction over the appeal. *See* § 12-2101(A)(1); *Musa*, 130 Ariz. at 312, 636 P.2d at 90.

Conclusion

¶7 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

¹During the status conference the court cautioned Lindsey that she might want to consider withdrawing the appeal until it signed the final decree so there was not a problem with the decision “on whether it was final, not . . . final, appealable, not appealable.”